

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer AA-68046.

Reversed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Offers to Lease

A noncompetitive oil and gas lease offer signed by the offeror may not be rejected by BLM pursuant to 43 CFR 3102.4, where the offeror's name on the accompanying stipulations is signed by the offeror's agent.

APPEARANCES: Florence Bern, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Florence Bern has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated November 21, 1985, rejecting her over-the-counter noncompetitive oil and gas lease offer AA-68046.

On February 12, 1985, appellant filed a lease offer with BLM for 640 acres of public domain land situated in sec. 12, T. 5 S., R. 15 W., Kateel River Meridian, Alaska, pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. | 226 (1982), and in accordance with Public Land Order No. 6477, dated September 29, 1983 (Seward Opening).

In its November 1985 decision, BLM rejected appellant's lease offer because the signatures on the offer form and the stipulations "do not match" and appellant had failed to disclose the name of the signatory and their relationship in accordance with 43 CFR 3102.4. BLM cites The Petrolar Group, 77 IBLA 232 (1983).

Appellant does not dispute BLM's conclusions that the two signatures on the documents do not match. In her statement of reasons, she acknowledges that she did not sign the stipulations:

When my original "Offer To Lease" was made on my behalf by my agent, Citizens Oil and Gas Corp. of Newport Beach, Calif. [(Citizens)] on Feb. 12, 1985, it was my understanding that my

"signature" on the stipulations could be signed by them through the "Power Of Attorney" which I signed at that time. This is the reason my signatures on the "Offer To Lease" and the "stipulations" do not match.

Will you kindly send me the necessary copies of the STIPULATIONS. Upon receipt, I shall sign them and return them to your office.

I trust that upon doing this, the Bureau will issue my lease as requested.

BLM, having concluded that the signatures on the lease offer form and the accompanying stipulations did not match, did not investigate to determine whether someone other than appellant signed her name to either the lease offer or the stipulations. Thus, citing 43 CFR 3102.4, BLM rejected her offer. That regulation provides:

| 3102.4 Signatures.

All applications, the original of offers, competitive bids, assignments and requests for approval of an assignment shall be holographically (manually) signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee, * * *. Documents signed by anyone other than the present or potential lessee shall be rendered in a manner to reveal the name of the present or potential lessee, the name of the signatory and their relationship.

The stipulations at issue in this case are entitled the "Upland Stipulations for Alaska." On May 5, 1988, the Board requested BLM to provide additional information concerning these stipulations, three signed copies of which were submitted with appellant's lease offer. In response to the request, BLM advised that the stipulations are not required to be filed with the lease offer, and where they are not so filed it is BLM's policy to send a standard notice to the lease offeror enclosing three copies of the stipulations for signature. That Notice, captioned Special Stipulations Required, reads:

Before an oil and gas lease may be issued, involving lands in your oil and gas lease offer, you must promptly sign and return the attached special stipulations which will be made a part of the lease.

If you choose not to do so, a decision will be issued rejecting your offer.

An excerpt from the Seward Study Opening Order attached to BLM's response to the Board advises prospective offerors that any lease issued will be subject to "General Stipulations for Alaska." Under 43 CFR 3101.1-2, the authorized officer may require special stipulations in addition to those contained in the lease form as conditions to leasing which

become part of the lease. Neither the opening order, nor the regulation recites any specific requirements concerning the execution of these special stipulations.

On appeal, appellant explains that she signed the lease offer form and that the signature on the stipulations was executed on her behalf by Citizens. Indeed, by comparing the signatures on the lease form and the stipulations with appellant's signature appearing on the statement of reasons, it is evident to even an untrained eye that the anomalous signature appears on the stipulations to the lease rather than the lease forms. The question presented in this appeal is whether appellant's failure to execute the stipulations in accordance with the requirements of 43 CFR 3102.4 subjects her lease offer to rejection. We hold that it does not.

[1] That regulation does not require that stipulations to an oil and gas lease be "holographically (manually) signed" by an applicant for lease. The quoted regulation applies only to "applications, the original of offers, competitive bids, assignments and requests for approval of an assignment." *Id.* Otherwise stated, the requirement in the second sentence of 43 CFR 3102.4, that other persons signing "documents" on behalf of a lessee must reveal themselves, applies only to signatures affixed to "applications, the original of offers, competitive bids, assignments and requests for approval of an assignment." *Id.* Since it is clear that lease offeror Bern signed the original lease offer manually, the second sentence of 43 CFR 3102.4, was mistakenly applied to reject her offer. *See Ethel K. Brauns*, 94 IBLA 64 (1986).

43 CFR 3102.4 as initially proposed would have applied to require manual signature on applications, offers, and requests for approval of an assignment. 47 FR 28550 (June 30, 1982). This list of affected documents was changed slightly by the final regulation, which limited the rule requiring such signatures to applications, offers, competitive bids, assignments, and requests for approval of an assignment. 48 FR 33648, 33667 (July 22, 1983). Several amendments were made to the rule following final publication. In January 1984 an amendment of 43 CFR 3102.4, changed the requirement that all the documents enumerated by the rule be manually signed by the lessee. *See* 49 FR 2110, 2113 (Jan. 18, 1984). The change resulted in the adoption of the rule in its present form.

In making this amendment to the rule, the preamble to rulemaking explained the reason for the amendment in terms which reveal that the "documents" referred to by the rule are those documents previously enumerated by the rule itself. The preamble comments:

7. Section 3102.4, page 33667, is amended by changing the requirement in this section that all documents be holographically signed to a requirement that only the original of all documents, except assignments, be holographically signed. In the case of assignments, the Mineral Leasing Act requires that three originally executed copies of assignments be filed for approval. It was the original intent of the regulations that only the original of most documents would have to be holographically signed. This

amendment clarifies this point and reduces the burden imposed on the public by the signature requirement.

(49 FR 2111). By specific reference to only those documents enumerated by the rule, it is made clear that the rule is only directed to those documents to which it refers: applications, the original of offers, competitive bids, assignments, and requests for approval of an assignment.

The Secretary has discretionary authority to set requirements for execution of special stipulations, however, it is improper to reject an oil and gas lease offer without notice based on a requirement not imposed by regulation. Thus, if BLM intends to make these special stipulations subject to the signature requirements of 43 CFR 3102.4, it must first inform an offeror, and provide an opportunity to comply prior to rejection. The fact that appellant filed stipulations with her lease offer which were not executed in a manner acceptable to BLM, under the circumstances, was the equivalent of not filing stipulations in the first instance. Consistent with its policy, BLM was therefore obligated to forward the stipulations and notify appellant of its requirements for execution of these stipulations prior to rejecting her offer.

As this Board held in Irvin Wall, 69 IBLA 371 (1983), in order to invalidate an otherwise good prior over-the-counter offer, there must be shown a valid reason why the offer should be considered defective. Accord Corinth Partnership, 80 IBLA 31, 37 (1984) (Arness, J., dissenting), decision vacated Corinth Partnership (On Remand), 83 IBLA 277 (1984). Where a lease offer is not made in violation of a Department regulation, it should not be rejected. Id. Because, in this case, there is no defect in the lease offer itself, and that is the only document regulated by 43 CFR 3102.4, it was error to reject the Bern lease offer because of a supposed violation of 43 CFR 3102.4.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Gail M. Frazier
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

Franklin D. Arness
Administrative Judge